

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**Board Conference Room
915 Capitol Mall, 3rd Floor
Sacramento, CA 95814**

April 18, 2012

Time: 10:08 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck and Wender;
ALJ Mark Soble and Analyst Massie
Others Present: Jason Resneck, General Counsel, Western Growers;
Barry Bedwell, President, California Grape and Tree Fruit League

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for April 4, 2012, were approved 3-0.

Public Comments: Jason Resnick, General Counsel for Western Growers Association, spoke on food safety programs and issues related to access taken during representation campaigns and well as educational programs relating to heat safety. Mr. Resneck thanked the Board for its openness, outreach, and transparency. He stated it was an interesting time for both the Board and the industry, and he is look forward to working with the agency. Barry Bedwell, President of the California Grape and Tree Fruit League, also complimented the Board and expressed his appreciation for the Board's openness.

- 2. Chair's Report:** General Counsel Torres-Guillén, Executive Secretary Barbosa and Chairwoman Shiroma attended the Senate Budget and Fiscal Review Committee hearing on April 11, 2012, where the General Counsel's budget change proposal was approved by a vote of 2-1. The General Counsel and Chair continue to review the current fiscal year budget to assure there will be no deficit.

- 3. General Counsel's Report:** General Counsel Torres-Guillén participated in the Saqui Law Group's 1st Annual Ag-Employer Advisory Conference on Tuesday, April 17, 2012, in Salinas, California. The General Counsel reported on the status of cases in the regional offices. Today is Allison Sakauye's last day with the ALRB.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

- 04/09/12 Rio Mesa Farms, LLC, 2012-NA-007-SAL
Oxnard CA; 200 workers; strawberries
- 04/11/12 Saticoy Berry Farms, 2012-NA-008-SAL
Oxnard CA; 300 workers; strawberries
- 04/12/12 Santa Rosa Berry Farms, LLC, 2012-NA-009-SAL
Oxnard, CA; 200 workers; strawberries
- 04/15/12 Premiere Raspberries, LLC (Dutra Farms), 2012-NA-010-SAL
Watsonville, CA; 266 workers at time of filing, 600-1,000 workers
during peak; strawberries

NOTICE OF INTENT TO ORGANIZE (NO)

- 04/05/12 Premiere Raspberries, LLC-Dutra Farms, 2012-NO-005-SAL
10% Showing of Interest met 04/11/12
- 04/10/12 Rio Mesa Farms, LLC, 2012-NO-006-SAL
10% Showing of Interest met 04/17/12

PENDING ELECTION MATTERS:

D'Arrigo Bros. of California, 2010-RD-004-SAL

On November 2, 2010, agricultural employee Alvaro Santos filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent representative UFW at D'Arrigo Bros. of California. The employer is located in Monterey and Imperial Counties and has 1,665 employees. An election was held on November 17, 2010, in Spreckles, Gonzalez and Calipatria, CA. The regional director impounded the ballots pending investigation of an unfair labor practice charge filed by the incumbent union UFW. The UFW filed objections to the election on November 24, 2010. On February 24, 2011, the Salinas Regional Director issued a complaint against D'Arrigo Bros. alleging that, since October 27, 2010 and continuing, the employer initiated, participated in, aided, and/or gave support to the decertification campaign against the certified union UFW. On March 11, 2011, the Executive Secretary issued his order on the UFW's election objections. Any request for review was due March 21, 2011. Neither party filed a request for review. On March 15, 2011, the Executive Secretary consolidated the election objections and

unfair labor practice complaint as each had the same or some of the same basis for the petition and complaint. A prehearing conference was held on May 27-28, 2011, and a prehearing conference order issued on May 31, 2011. A hearing on the consolidated complaint and election objections commenced on June 13, 2011. The hearing resumed on July 11, 2011 and closed on September 7, 2011. The post-hearing briefs were filed January 23, 2011, and the matter is pending the Investigative Hearing Examiner's decision.

Sun World, 2010-UC-1-VIS

The UFW filed a unit clarification petition involving Sun World and a number of other entities on September 14, 2010. The employer requested and was granted an extension of time to file its response to the petition by November 12, 2010. The UFW was granted an extension through December 15, 2010 to respond to the region's request for information. The union's response was received on December 15, 2010. The Regional Director granted the Employer an extension February 1, 2011, to file a further response. The region received the additional information and the UFW requested the opportunity to respond to the information received. Their response is due May 16, 2011. On October 12, 2011 the Regional Director requested that the union's unit clarification petition or amendment of certification be set for hearing. On October 13, 2011 the Executive Secretary granted that request and set the matter for hearing for October 26, 2011. The hearing opened and closed on October 26, 2011. The post-hearing briefs were due January 20, 2012. On December 19, 2011, the UFW requested a three-week extension of time to file its post-hearings brief. The Executive Secretary granted the union's request. Both the UFW and Employer filed their post-hearing briefs. On February 28, 2012, the IHE issued his decision on the UFW's unit clarification petition. The UFW filed its exceptions to the IHE's decision on March 12, 2012. Reply briefs were due March 22, 2012. On March 21, 2012, the Executive Secretary granted the Employer request for a four-day extension of time to file reply to exceptions. The reply brief was filed March 26, 2012. The matter is pending decision by the Board.

COMPLAINT REPORT

COMPLAINTS ISSUED:

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

South Lakes Dairy Farms, 2009-CE-028-VIS

Pre-hearing conference April 24, 2012

Hearing June 5-14, 2012

Bayou Vista Dairy, 06-CE-9-VI

Pre-hearing conference June 1, 2012

Hearing July 9-20, 2012

H&R Gunland Ranches, Inc., 2009-CE-063-VIS et al.

Pre-hearing conference held March 26, 2012

Hearing August 27, 2012

Premiere Raspberries, LLC, 2012-CE-003-SAL

Pre-hearing conference August 28, 2012

Hearing September 11-24, 2012

CASES PENDING ALJ/IHE DECISION

D'Arrigo, 2010-RD-004-SAL

The matter is pending the IHE's decision

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

San Joaquin Tomato Growers, 93-CE-38-VI

Exceptions received March 5, 2012

Reply briefs due April 20, 2012

CASES PENDING BOARD DECISION OR ACTION:

Sun World, 2010-UC-1-VIS

Exceptions filed March 12, 2012

Reply briefs filed March 26, 2012

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

San Joaquin Tomato Growers, Inc., 2011-MMC-001

On November 17, 2011 the UFW filed a declaration requesting mandatory mediation and conciliation. On November 22, 2011 the employer filed its answer and opposition to the motion. On December 2, 2011, the Board issued an order to show cause why it should not dismiss the union's request for failure to show that the parties have not previously had a binding contract between them. The union's response was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011 the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011 the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012 in Modesto CA. On January 18, 2012 the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012 the UFW filed a request for ruling on the pleadings. On January 26, 2012 the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter was held on February 8, 2012. Post-hearing briefs were received February 23, 2012. On March 19, 2012, the employer filed exceptions to the ALJ decision. Reply briefs are not provided for in the Board's regulations. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See 38 ALRB No. 2.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 10, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The matter is pending the selection of the mediation dates.

Ace Tomato Company, Inc., 2012-MMC-001

On March 14, 2012, the UFW filed a declaration requesting mandatory mediation and conciliation. The employer's response was received March 23, 2012. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See Admin. Order No. 2012-5.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 5, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The matter is pending the selection of the mediation dates.

COURT LITIGATION:

Premier Raspberries LLC dba Dutra Farms, Case No. CV 173564

On March 15, 2012 the ALRB General Counsel filed an application for a Temporary Restraining Order and Order to Show Cause at the Superior Court of the State of California in Santa Cruz County against Premier Raspberries, LLC dba Dutra Farms. Premier Raspberries is located in the Salinas/Watsonville area. There were 266 workers at the time of filing and approximately 600 to 1,000 workers during peak.

On March 1, 2012, Salinas ALRB Regional Office received unfair labor practice charge no. 2012-CE-003-SAL. Based on the facts uncovered during the investigation of that matter, the General Counsel decided to seek an injunction. The requested Temporary Restraining Order sought to enjoin Premier Raspberries from engaging in conduct which the General Counsel has reasonable cause to believe constitutes unfair labor practices in violation of Sections 1153 (a), (b) and (c) of the Act. The General Counsel also sought an affirmative order to reinstate employee Dalia Santiago. On March 15, 2012 the Judge granted the TRO. Following a hearing on the General Counsel's request for a permanent injunction that was held on April 11, 2012, the court granted the General Counsel's request for an injunction. The court ordered the reinstatement of agricultural employee Dalia Santiago and ordered the company to allow ALRB access to Respondent's employees. On April 17, 2012, the court issued its order finding that its order of April 13, 2012 remained in effect and was not stayed, notwithstanding the provisions of Cal. Code of Civil Procedure section 916 and Respondent's notice of appeal filed April 13, 2012.

MISCELLANEOUS:

The Board authorized payment of \$400 for the Association of Labor Relations Agencies (ALRA) annual dues for the period June 1, 2012 through May 31, 2013.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—Labor and Workforce Development Agency Assistant Information Officer Carlos Quant appreciated the presentation by Consultant Steve Guida regarding the ALRB's case tracking system. Chairwoman Shiroma and Analyst Massie provided an update on the move to the California Government Enterprise Network (CGEN).
- b. Education/Outreach—The agency now has a signed agreement with UC Berkeley to assist with education and outreach efforts. Board Member Bert Mason and General Counsel Sylvia Torres-Guillén are scheduled to speak at a workshop organized by AgSafe at Harris Ranch on May 15, 2012. The general topic is the amendments to the Agricultural Labor Relations Act made by Senate Bill 126. AgSafe is a non-profit employer organization dedicated to the prevention of illness and injury among those working in agriculture.

- c. Election Manual—Board Counsel Wender will review the Election Manual, update it in terms of legal precedent, then meet with a larger group to review current practices.
- d. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. Regulations

- a. **Update on Regulations to Implement Senate Bill No. 126** – On March 21, 2012, the Board issued a 15-day Notice of Changes to provide the public with the opportunity to comment on the changes made to the language of the amendments as originally proposed. No comments were received. The Board voted 3-0 to adopt the regulations as reflected in the 15-Day Notice.
- b. **Discussion of Potential Subjects for Rulemaking In 2012:** *Items listed in the Rulemaking Calendar (Unit Clarification Procedure, Voter Eligibility Exclusions (Family Members), Exculpatory Evidence, Electronic Filing).* Senior Board Counsel Wender drafted questions regarding electronic filing and is awaiting responses from Board Counsel before forwarding to the Ad Hoc Committee.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB* Nothing to report.

9. Personnel – Chairwoman Shiroma and General Counsel Torres-Guillén expressed appreciation for Administrative Assistant Allison Sakauye and the Board joined in wishing her well at the State Controller’s Office. The Board hired Student Assistant Nickolas Saldivar III.

10. Roundtable

Nothing to report.

The public meeting adjourned at 11:25 a.m.